

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SEAN M. MAYBERRY
Claimant

VS.

CESSNA AIRCRAFT COMPANY
Self-Insured Respondent

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Docket No. **1,040,983**

ORDER

Claimant requests review of the June 15, 2009 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

At the June 9, 2009 preliminary hearing, claimant requested payment of medical bills. After the preliminary hearing, the Administrative Law Judge (ALJ) entered an Order which provided that respondent pay all outstanding and related medical bills incurred on and after July 1, 2008, as authorized medical expenses. And respondent was further ordered to pay any medical expenses incurred before July 1, 2008 as unauthorized medical expenses.

Claimant requests review and argues that he was denied medical treatment and was forced to seek it on his own and therefore he should not be forced to pay the medical bills incurred due to his accidental injury.

Respondent argues the Board does not have jurisdiction to review this preliminary hearing order and therefore claimant's application for review should be dismissed. In the alternative, respondent argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant alleged he suffered a series of repetitive injuries each and every day at work beginning in March 2008. Claimant sought medical treatment on his own although he alleged he repeatedly complained to the health care professionals at respondent.

Claimant admitted he was diagnosed in May 2008 with a herniated cervical disk but he did not report to respondent that he had a neck injury and surgery was performed in June 2008. On July 1, 2008, claimant provided respondent with an FMLA update and noted he had a work-related repetitive injury that had progressively worsened with each day worked and resulted in the surgery performed in June 2008.

Dr. Paul S. Stein performed a court ordered independent medical examination of the claimant on January 20, 2009. Dr. Stein concluded there was a causal connection between claimant's work and the herniated cervical disk. Dr. Stein further noted claimant had a good result from his surgery and no further treatment was recommended.

As previously noted, claimant proceeded to preliminary hearing seeking payment of the medical bills including those for the surgery. The ALJ ordered respondent to pay for any medical bills incurred after July 1, 2008, but further determined that any bills incurred before that date were to be paid as unauthorized medical.

The sole issue raised on this appeal from the ALJ's preliminary Order is whether the medical bills incurred before July 1, 2008, should be ordered paid by respondent as authorized medical. However, the respondent argues that the issue of payment of medical bills is not a jurisdictional issue that can be appealed. This Board Member agrees.

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. At the June 9, 2009 preliminary hearing the sole issue was claimant's request for payment of medical bills. That is not a jurisdictional issue listed for Board review from a preliminary hearing.

The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.¹

¹ See K.S.A. 44-551.

But K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment and the payment of medical compensation. Whether the evidence establishes that medical compensation should be paid is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.²

The ALJ did not exceed her jurisdiction and the Board does not have jurisdiction to review the Judge's preliminary findings regarding payment of medical compensation. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.³ Accordingly, claimant's appeal is dismissed.

The claimant may preserve the issue for final award as the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁵

WHEREFORE, it is the finding of this Board Member that the claimant's appeal of the Order of Administrative Law Judge Nelsonna Potts Barnes dated June 15, 2009, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of September 2009.

DAVID A. SHUFELT
BOARD MEMBER

² *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

³ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

⁴ K.S.A. 44-534a.

⁵ K.S.A. 2008 Supp. 44-555c(k).

c: Kevin T. Stamper, Attorney for Claimant
Edward D. Heath Jr., Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge